

IV. REMARKS

The applicant has amended the specification and claims as set out above in the amendment section and provides remarks set out below to clarify the claims and to address each concern raised by the office in the official communication mailed November 21, 2006. The amendments submitted herein should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office's convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Assignee may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the applicant expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

It is noted that the Applicant's representative, Luke Santangelo, participated in a personal interview with the Examiner and his Supervisor on February 26, 2007, and the amendments are believed to responsive to the issues discussed therein.

Section 102 concerns

The action expresses concerns under section 102 to the claims and cites US Patent Application Publication No. 2002/0082865 to Bianco et al. (the "Bianco" reference). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*,

814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant amends independent claims 1, 12 and 19 to state, *inter alia*, "at least one record of incremental provider observed progress development, said record of incremental provider observed progress development comprising an indication of incremental patient advances made toward a composite physical therapy treatment goal as compared to a preferred result" (Support for these amendments may be found in the application at: Fig. 2F; Fig. 4, "Summary Note (progress); Fig. 9, element 134; paragraph 19, lines 11-16; paragraph 27, lines 5-7; Attachment A, pages 1 and 2 of 18; Attachment A, page 6 of 18; and the like.) Further, the claims have been amended to discuss tracking skilled-service rendered to a patient in a physical therapy aspect. Various applications of the embodiments of the present invention may be provided in physical therapy treatments such as but not limited to treatments related to wound care and the like. Examples of incremental provider observed progress development may include but are not limited to time; minutes; seconds; quality of joint movements; orientation of joints in 3 D space (i.e., laterally flexed and rotated to the right); quality of movement; degrees as utilized to measure range of motion including: degrees of extension/flexion, abduction, adduction, medial rotation, lateral rotation, plantar flexion, dorsiflexion, supination and pronation; gait parameters including: speed, cadence, qualitative measures for initial contact, mid-stance and terminal stance as well as those components associated with the swing phase of gait; balance parameters including: single limb stance, balance with eyes open and closed, tandem walking; steps; repetitions; recovery time; rotation; and as it pertains to wound care, the length, width, depth, tunneling, undermining and condition of the tissue and exudate; and the like.

The claims have been clarified to explain that a record of incremental provider observed progress development may include progress made by a patient as compared to a preferred result, e.g., actual compared to ideal results. In embodiments, incremental provider observed progress development may include a change in a patient, for example a patient's symptoms may worsen and a physical therapy movement may improve. Both may be important to record for progressing treatment or even for referral to the appropriate providers. Incremental patient advances as discussed in the claims may include, in embodiments, patient outcomes such as but not limited to the

number of visits to achieve goals, number of visits for a wound to heal, days to healing, days to achieve goals, costs to heal a wound, costs to achieve goals, and the like. Perhaps these records of incremental provider observed progress development may provide documentation of physical therapy treatments so that the therapists can be fiscally responsible in their standards of practice and care, evidence-based practice, evidence-based treatment algorithms, and the like.

In addition, claim 1 has been amended to include, *inter alia*, “treating said patient based on at least one physical therapy treatment goal at said physical therapy treatment location by said provider” In embodiments, a physical therapy treatment goal may include goals identified by the patient or perhaps even goals identified by the treating therapist.

It is therefore noted that a record of progress as clarified in independent claims 1, 12 and 19 is not discussed in the Bianco reference and is not discussed as compared to a preferred result. Bianco may discuss physical therapy in Figs. 13C and 13D, however this does not relate to an incremental progression as discussed and claimed herein. In addition, Bianco’s Fig. 3 may show a treatment pathway timeline display. As discussed in Bianco, “the treatment pathway timeline display **32** includes a plurality of time-sequenced phase images **34** corresponding to time-sequenced phases of health information for preparing and educating the patient for the medical event or a post-event recovery thereby providing the treatment pathway for a given medical event for the patient **5**.⁵” (See Bianco, Publication No. US2002/0082865A1 paragraph 60.) Again, Bianco’s treatment pathway timeline display does not disclose “at least one record of incremental provider observed progress development, said record of incremental provider observed progress development comprising an indication of incremental patient advances made toward a composite physical therapy treatment goal as compared to a preferred result” as discussed and claimed herein.

Therefore, as explained in the personal interview and in this response, it is respectfully submitted that independent claims 1, 12, and 19 and all the claims made ultimately dependent thereon are not anticipated by Bianco. Since claims 2-11, 13-18 and 20 are ultimately dependent upon one of the independent claims 1, 12 or 19, and it is believed that claims 1, 12, and 19 are in condition of allowance, claims 2-11, 13-18 and 20 are also believed to be in a condition for allowance in that they each incorporate by reference all the limitation of the claims to which they are dependent. See 37 C.F.R. §1.75(c). Should the office require further explanation, the applicant

stands ready to supplement the above remarks if necessary.

Newly added dependent claims are presented in claims 21-26. The prescribed additional claim fees of \$150 for the 6 new claims are included with this response. Support for these claims can be found in paragraphs 47 and 48; Figs. 1, 2A, and 2B; Attachment A, pages 1 and 2 of 18; Attachment A, page 6 of 18; and the like. Valuation of a quantifiable record of incremental provider observed progress development as discussed in new claims 21-23 may include, in embodiments, outcome data such as perhaps predicated on published evidence or the like. Further examples are also discussed in the present application.

CONCLUSION

In view of the foregoing clarifications and remarks, it is respectfully submitted that the claims are novel over the cited art. Accordingly, the 35 U.S.C. §102 concerns should now be reconsidered and withdrawn. Because all rejections should now be overcome, it is respectfully submitted that the instant application should now be in condition for allowance. Favorable reconsideration and an early Notice of Allowance are earnestly solicited.

In the event that any outstanding matters remain in the application, the Examiner is invited to contact the undersigned at (970) 224-3100.

Dated this 21st day of March, 2007.

Respectfully submitted,
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